

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No.908 of 1993

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For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES
2. To be referred to the Reporter or not? YES
3. Whether Their Lordships wish to see the fair copy of the judgement? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge?

NO

STATE OF GUJARAT

Versus

LEGAL HEIRS OF ISMALI H RANZA

Appearance:

Shri C.C. Bhalja ASSTT. GOVERNMENT PLEADER for Petitioners
None present for Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/11/98

ORAL JUDGEMENT :

Heard learned counsel for the defendant/
petitioners.

2. By this CRA, the defendant/ petitioners challenges the order of the first appellate court in Civil Misc. Application No.5 of 1993 dated 18.6.1993, below exh. 16, under which it declined to condone the delay caused in filing of the Regular Appeal against the

judgment and decree of learned Civil Judge, Senior Division, Jamnagar dated 9/10 July 1992, under which the suit of the defendant/ respondent had been partly decreed.

3. The facts giving rise to this CRA are that the plaintiff/ respondent, since deceased, now represented by his heirs and legal representatives filed Regular Civil Suit No.127 of 1988 in the court of Civil Judge, Senior Division, Jamnagar against the defendantspetitioners wherein prayer has been made for grant of injunction restraining them from implementing the order under which he was dismissed from services. He was in service of the Police Department of the State of Gujarat. This suit was decreed by the learned Civil Judge, Senior Division, Jamnagar on 9/10th July 1992 and the defendantspetitioners were directed to reinstate the deceased plaintiff in service in the light of the observations made by the trial court after due compliance thereof.

3. This judgment and decree of the trial court is challenged by the defendants- petitioners by filing appeal in the court of the learned District Judge, Jamnagar which was transferred to the court of learned Assistant Judge at Jamnagar. As there was some delay in filing of this appeal, the defendants- petitioners filed an application being Civil Misc. Application No.5 of 1993, wherein prayer has been made for condonation of delay caused in filing thereof. This application has been dismissed by the learned Asstt. Judge, Jamnagar under order dated 18th June 1993. Hence this CRA before this Court.

4. From the judgment of the learned first appellate court I find that it has proceeded on the principle that the defendants- petitioners are under legal obligation to explain each day's delay. That is not the law now. What the learned first appellate court has to see is whether defendants- petitioners have furnished sufficient cause for this delay caused in filing of the appeal or not. Overall facts and substance is to be considered. In the present case I have no hesitation to say that the learned first appellate court has gone on the form and not on the substance of the matter. Even if for a small period the defendants- petitioners failed to give explanation for the same, it should not have been taken to be a case where delay caused in filing appeal should not be condoned. The reference may have to the recent decision of the Honourable Supreme Court in the case of N. Balakrishnan v. M. Krishna Murthy, 1998 (7) SCC 123.

5. In the matter where appeals are to be filed by the State Government, its functionaries and officers in the civil court beyond limitation, the court is concerned to see that just cause of the State Govt. is not defeated, merely because its officers are slightly negligent in processing the case and dealing with the matters and in filing appeals in the courts. The court's anxiety should have been to see whether on merits the petitioner has a case or not. In case where the court below considered that the litigant has a strong case on merits then the question of condonation of delay caused in filing of appeal has to be considered liberally. From the impugned order of the first appellate court I find that it has not cared to go on the question whether there is some merit or substance in appeal or not; it is only on strict approach of each day's delay has to be explained, it has proceeded and decided the matter. The order of the learned first appellate court clearly falls under clause (c) of sec.115(1) of the Code of Civil Procedure. It cannot be allowed to stand. In case the order impugned in this CRA is allowed to stand, it will occasion certainly a failure of justice and will cause injury to the defendants- petitioners. The respondent, since deceased, has been dismissed from service after holding fulfilled departmental inquiry and in the matter of challenge of the said order of the defendantspetitioners in the civil court, the civil court has very limited power of judicial review. This matter deserves to be considered on merits by the first appellate court and in case at the threshold of the matter on the ground of delay caused in filing of the appeal it is dismissed it will certainly occasion a failure of justice to the State of Gujarat.

6. In the result this CRA is allowed and the order of the learned Asstt. Judge, Jamnagar dated 18.6.1993 in Civil Misc. Application No.5 of 1993 is quashed and set aside and the delay caused in filing of the Regular Civil Appeal against the judgment and decree of learned Civil Judge, Senior Division, Jamnagar dated 9/10th July 1992 in Regular Civil Suit No.127 of 1988 is condoned. Learned court below is directed to decide the appeal filed by the petitioners on merits. Revision and rule stand disposed of accordingly with no orders as to costs.

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